





In The
SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-1578

LOUIE L. WAINWRIGHT, Secretary
Department of Offender Rehabili-
tation, State of Florida,

Petitioner,

vs.

JOHN SYKES, #003316,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

SUPPLEMENTAL BRIEF OF PETITIONER
FILED PURSUANT TO
SUPREME COURT RULE 24(5)

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PRELIMINARY STATEMENT

Petitioner files this Supplemental
Brief pursuant to Supreme Court Rule 24(5)
for the purpose of calling attention to
two new cases decided by this Honorable

Court on May 3, 1976: *Estelle v. Williams*, Case No. 74-676, as reported in 19 Cr.L 3061, and *Frances v. Henderson*, Case No. 74-5808, as reported in 19 Cr.L 3072.

ARGUMENT

The decision of the Court of Appeals, Fifth Circuit is in conflict with the above cited decisions of this Court in the following particulars; *inter alia*:

In *Frances v. Henderson* this Court clearly held that principles of comity require that the rule of *Davis v. United States*, 411 U.S. 233 (1973), applies with equal force when a federal court is asked in a habeas proceeding to overturn a state court conviction and that the habeas petition must show not only "cause" but prejudice in order to excuse the waiver. Quite to the contrary, the

Fifth Circuit held, in the instant case, that principles of comity did not refrain federal courts from determining the underlying constitutional claim even though the respondent never alleged or established "cause" because prejudice to the respondent was "inherent" (presumed).

The Fifth Circuit held, herein, that even where an accused has the assistance of counsel, there is a *sua sponte* obligation on the part of the trial court to determine the voluntariness of a confession even where it is not challenged by counsel. But in *Estelle v. Williams*, the Court said:

"...Under our adversary system, once a defendant has the assistance of counsel the vast array of trial decisions, strategic and tactical, which must be made before and

during trial rests with the accused and his attorney. Any other approach would rewrite the duties of trial judges and counsel in our legal system."

19 Cr.L at 3065

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, CHARLES CORCES, JR., Counsel for
Petitioner, and a member of the Bar of
the United States, hereby certify that
on the _____ day of May, 1976, I
served three copies of the Supplemental
Brief of Petitioner Filed Pursuant to
Supreme Court Rule 24(5) on William F.
Casler, Esquire, Counsel for Respondent,
6795 Gulf Boulevard, St. Petersburg,
Florida 33706, by a duly addressed
envelope with postage prepaid.

CHARLES CORCES, JR.
Assistant Attorney General